

(2019) 02 PAT CK 0020

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1575 Of 2019

Deepak Kumar

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 18-02-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 420

Citation : (2019) 02 PAT CK 0020

Hon'ble Judges : Rajeev Ranjan Prasad, J

Bench : Single Bench

Advocate : Sandeep Kumar, Sanjeet Kumar, Rohit Raj, Namrata Mishra, Alok Ranjan

Final Decision : Allowed

Judgement

1. Learned counsel for the respondent no.8 is permitted to make necessary corrections in Paragraph 14 of the counter affidavit in course of the day.
2. Heard learned counsel for the petitioner, learned counsel representing the Bihar State Food and Civil supply Corporation as well as learned counsel representing the State.
3. The petitioner in the present case is aggrieved by the order as contained in Memo No.9244 dated 09.09.2017 issued under the signature of the Managing Director, Bihar State Food and Civil supply Corporation (hereinafter referred to as the Corporation) insofar as, it relates to blacklisting of the petitioner for three years and debarring him from participating in any tender.
4. It appears from the records that the petitioner happen to be the Transport-cum-Handling Agent (Main) for the Revenue District of Madhubani. An agreement dated 24.10.2016 has been executed between the petitioner and the Corporation through its District Manager, Madhubani in connection with the transport work of the essential commodities for the District of Madhubani. This according to him is valid for three years from the date of publication of the tender notice.

5. It is the case of the petitioner that on 29.03.2017, a Truck bearing Registration Number BR-1G-9085 uploaded with 500 bags of rice (total wight 252 quintal) started from Rack Point, Darbhanga, for Jainagar, Madhubani godown at about 07:19 P.M. The vehicle was stopped by a person near airport at Jainagar Road and some illegal demands of money were made. The driver of the vehicle was threatened on the allegation of theft if the demand is not fulfilled. Thereafter, that person called somebody from Mobile who came introducing himself as Block Supply Officer, Keoti who took the documents from the driver of the vehicle and seized the vehicle and told the driver to take the vehicle to Block Office. The vehicle was kept in the Block Office premises. On the next day, the vehicle was taken to S/R Dharmkanta, Kandraule Rahika, Madhubani for weighing in which the gross weight increased to 80 KG. There was no shortage of rice loaded on the said truck. Total 500 bags were found intact in the vehicle. As the driver was unable to pay the illegal demand of money on the next day, F.I.R was lodged at 07:00 P.M. giving rise to Keoti P.S. Case No.51 of 2017 registered under Section 420/34 of the Indian Penal Code and Section 7 of the Essential Commodities Act with some false allegations.

6. It is further submitted that on 30.03.2017, the petitioner requested the District Manager, Madhubani to take appropriate action whereupon on the next date, i.e. 31.03.2017, the District Manager, Madhubani informed the Headquarter regarding the incident. As the petitioner was trying to get released the rice so that it may be transported safely to the godown of the respondent-Corporation, the petitioner was called upon to pay a sum of Rs.8,23,209/- towards the price of 252 quintal of rice which were loaded on the seized truck. The petitioner deposited the said amount with the Corporation and at the same time, the said amount was deducted from the bill of the petitioner. Later on, the petitioner obtained the track history report of the vehicle which was provided. The report shows that during the period from 30.03.2017 to 31.03.2017 the aforesaid vehicle was taken to Rahika and the vehicle came back again to its place. In the F.I.R. a story was concocted that there was shortage of 16 bags, the petitioner approached the Court of learned ACJM-VIIth, Darbhanga for release of the seized rice in the aforesaid case but the prayer of the petitioner was rejected vide order dated 11.05.2017.

7. A Criminal Revision preferred against the said order was, however, allowed by the learned District and Sessions Judge, Darbhanga vide order dated 05.08.2017 in Criminal Revision No.198 of 2017 but despite there being a direction to the S.H.O, Keoti Police Station and Block Supply Officer, Keoti to release the said rice, the S.H.O, Keoti Police Station and Block Supply Officer, Keoti did not release the aforesaid seized rice. At one stage, learned A.C.J.M, Darbhanga vide his Letter No.149 dated 20.09.2017 issued show cause notice to the Block Supply Officer, Keoti and the S.H.O, Keoti Police Station through the District Magistrate, Darbhanga but despite all these actions the seized rice were not released.

8. Thereafter, the petitioner having been left with no other option, moved this Court in Cr.WJC No. 1921 of 2017 for release of the seized rice. This Court after hearing the parties, vide order dated 29.01.2018 was pleased to allow the petitioner to lift the foodgrains seized and to deliver the same at the godown of Bihar State Food and Civil Supply Corporation situated at Jainagar for which date was fixed on 06.02.2018. After the aforesaid order was passed by this Court, the seized rice was released on 06.02.2018 and the same has been delivered to the respondent Corporation at Jainagar godown. Learned counsel for the petitioner submits that the Deputy General Manager, Transportation, Headquarter, B.S.F.C, Patna vide his Letter No.2045 dated 02.08.2018 has admitted that the total loss of rice is only two quintals for which the required amount has been deducted and the rest of the amount being Rs.8,16,674.60/- has been ordered to be refunded to the petitioner. The refund has, however, not been given in want of funds.

9. In the aforementioned circumstance, learned counsel submits that when the show cause notice calling upon the petitioner to show cause as to why the agreement be not terminated and the petitioner be not blacklisted was served upon the petitioner, a detailed reply was submitted but without considering the reply of the petitioner, the agreement was terminated, security money was forfeited and an order of blacklisting was also passed.

10. The petitioner moved this Court in C.W.J.C. No.14366 of 2017 challenging the Memo No.9244 dated 09.09.2017 issued under the signature of the Managing Director of the Corporation. In view of the order dated 17.04.2018 passed in the said writ application, the petitioner has approached the Bihar Public Works Contracts Disputes Arbitration Tribunal where the matter relating to cancellation of the agreement and forfeiture of security are pending consideration. It is submitted that in L.P.A. No.367 of 2016 a Division Bench of this Court took a view that so far as question of blacklisting of a firm is concerned, the same cannot be a subject matter of adjudication by the forum known as Bihar Public Works Contracts Disputes Arbitration Tribunal, thus, the petitioner has approached this Court against the order, insofar as, it relates to blacklisting of the petitioner.

11. Assailing the impugned order dated 09.09.2017 as contained in Annexure "1" to the writ application, learned counsel for the petitioner submits that a bare perusal thereof would show that the reply of the petitioner has not at all been considered and the same has been rejected by saying that the petitioner has raised more questions while giving answers. Learned counsel submits that the impugned order, insofar as, it relates to blacklisting of the petitioner is bad in law for non-consideration of the reply submitted on behalf of the petitioner. Learned counsel has drawn the attention of this Court towards the reply as contained in Annexure "P/16" to the writ application in which he has narrated the entire facts and circumstances of the case leading to delay in transportation of rice. Apparently, according to learned counsel, this has not been considered.

12. Learned counsel has also relied upon the Judgment of a learned Coordinate

Bench of this Court in the case of Pawan Kumar v. State of Bihar & ors. reported in 2009 (4) PLJR 104 in which the learned Coordinate Bench of this Court has taken a view after relying upon the Judgment of this Court in the case of M/S Swami Distributors vs. The State of Bihar & Ors. since reported in 1990 (1) PLJR 210 that merely because one F.I.R. has been lodged and a criminal case is pending against the petitioner, it would not lead to any conclusion of guilt and for that reason alone he cannot be deprived of his right to business.

13. Learned counsel has also relied upon another Judgment of a learned Coordinate Bench of this Court in CWJC No.17338 of 2017 which has been disposed of on 08.01.2018. This Court while dealing with the case of blacklisting has referred the Judgment of the Hon'ble Supreme Court in the case of Kulja Industries Limited vs. Chief General Manager, Western Telecom Project, Bharat Sanchar Nigam Limited and others reported in (2014) 14 SCC 731 and then while remitting the matter to the Engineer-in-Chief (Central), Water Resources Department, Government of Bihar, Patna for taking a fresh decision with respect to the period of blacklisting to be imposed upon the petitioner, directed that the matter of blacklisting shall await the decision of the Tribunal before whom the matter related to cancellation of contract is pending consideration. In the said case also certain disputes arising out of the agreement were pending consideration before the Bihar Public Works Contracts Disputes Arbitration Tribunal. Learned counsel submits that the order impugned is fit to be set-aside and in case the respondents are still willing to proceed with the matter of blacklisting, then instead of being a judge of their own cause, they should await the Judgment of the Tribunal.

14. On the other hand, learned counsel representing the respondent Corporation has heavily relied upon Clause 4 (d) of the agreement. Learned counsel submits that in case of delay in transporting the foodgrains within a reasonable time, according to the condition prescribed it would be presumed that the intention of the second party was to default or to black market the foodgrains by illegal means and, accordingly, legal action would be taken by the Corporation. The action envisaged under Clause 4 (d) includes action of blacklisting and debarment. In the counter affidavit filed on behalf of the respondent Corporation it is admitted that the rice in question have been delivered and the petitioner is entitled to get back a refund of Rs.8,16,674.60/- for which allotment of adequate funds have been sought for.

15. Learned counsel for the State is present, however, in the nature of the contest between the petitioner and the Corporation, the State has no significant role to play.

16. Having heard learned counsel for the parties and on perusal of the records as also the Judgments cited at the bar, this Court finds that the petitioner had submitted his reply vide Annexure 'P/16' against the proposed action of cancellation of agreement and blacklisting. The impugned order as contained in Annexure '1' to the writ application does mention about the receipt of reply from

the petitioner but then it has not been considered dispassionately by the competent authority. The reply has been rejected only by stating that it contains more questions than the answers and that the story made out by the petitioner is not believable. To this Court, it is apparent from the records that the impugned order, insofar as, it relates to blacklisting of the petitioner and is under challenge in the present writ application cannot sustain the test of law for the reason that it suffers from vice of non-consideration of the materials available on the record. It is evident that the F.I.R was lodged under an impression that there was an attempt of black marketing but when the rice was weighed at the Dharamkanta the entire 500 bags of rice were said to be present. The petitioner made his all efforts to get the rice released in accordance with law but despite the order of the court and show cause notice issued to the authorities concerned by learned ACJM, the rice were not released. The petitioner had to move this Court in criminal writ jurisdiction and only after the order of this Court the rice were released. To this Court, it prima-facie indicates that despite his best efforts taken during the process of Court, the petitioner was unable to deliver the rice in the godown within a reasonable time. Till date, there is no finding of guilt against the petitioner as the criminal proceeding arising out of the F.I.R. lodged in the matter has not culminated in a conviction of the petitioner. The respondent Corporation has blacklisted the petitioner on a mere presumption as envisaged under Clause 4 (d) of the agreement. A bare perusal of Clause 4 (d) would show that it talks of 'presumption'.

17. In the opinion of this Court, a valuable right to business which is provided under the Constitution cannot be curtailed by incorporating a Clause in the agreement to the effect that there will be a presumption of the fact that an unreasonable delay in delivery of foodgrain is because of indulgence of the transporter in black marketing. Such presumptions cannot be given effect to unless the guilt is duly proved in accordance with law.

18. This Court has been informed that the matter arising out of cancellation of agreement and forfeiture of security is still pending before the learned Arbitration Tribunal. In this circumstance, while setting-aside that part of the order by which petitioner has been blacklisted as contained in Memo No.9244 dated 09.09.2017, this court would remand the matter to the competent authority of the Corporation to consider the reply of the petitioner as contained in Annexure 'P/16' in the light of the observations of this Court but occasion to take any action towards passing of an order in blacklisting matter would arise only after the decision of the Tribunal is rendered in the connected matter in which cancellation of agreement and forfeiture of security are under challenge or in the criminal case guilt of the petitioner is proved. This Court is also keeping in mind another Judgment of a learned Coordinate Bench of this Court in the case of M/s NCC Ltd. vs. State of Bihar reported in 2013 (1) PLJR 952. In the said Judgment the learned Coordinate Bench of this Court had gone into the ratio of the Judgment of the Hon'ble Apex Court in the case of M/s J.G. Engineers Pvt. Ltd. vs. Union of India & Anr reported in AIR 2011 SC 2477 and after examining

various other cases lodged on the subject held in Paragraph 26 that the effect of a debarment would have serious civil consequence on the party concerned, therefore, such issues cannot be left to be decided by the party which has made allegation and against whom also there is a counter allegation by the contractor concerned.

19. The impugned order to the extent indicated hereinabove, is thus, quashed and cancelled. Since, this Court has seen from the records that despite their being an order of the learned District and Sessions Judge, Darbhanga in Criminal Revision No.198 of 2017 dated 05.08.2017 (Annexure P/19) and order of learned ACJM VII (Annexure P/20) the rice was not released and thereafter the learned ACJM had also issued show cause to the Block Supply Officer, Keoti and the S.H.O, Keoti Police Station but that also failed to draw the attention of the concerned authorities and the petitioner was compelled to move this Court in criminal writ, in order to ensure the sanctity of the order of the District Court, this Court is willing to take suo-motu notice of this fact appearing from the records and direct the District Magistrate, Madhubani to examine the matter and find out as to how there was a violation of the order of the learned ACJM, Darbhanga as contained in Annexure P/20 to the writ application why despite the show cause issued by the learned ACJM, the order was not complied with and who are the persons responsible for non-compliance of the said order. The enquiry and consequential action in this regard shall be completed within a period of three months from the date of receipt/production of a copy of this order.

20. This writ application stands allowed to the extent indicated hereinabove.